

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for Reduction of  
Penalty of:

MANMOHAN NAYYAR, M.D.,

Physician's and Surgeon's Certificate  
Number A42225,

Respondent.

Case No. 26-2009-196583

OAH No. L2009070788

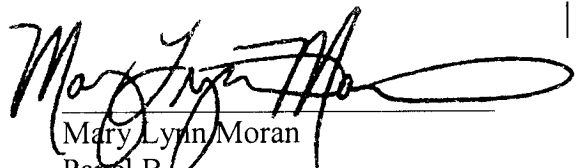
**DECISION AFTER NONADOPTION**

The Proposed Decision of the Administrative Law Judge was submitted to the Medical Board of California on September 28, 2009. After due consideration thereof, the Board declined to adopt said proposed decision and thereafter on November 4, 2009, issued an Order of Nonadoption and subsequently issued an Order Fixing Date for Submission of Written Argument. Pursuant to an Order dated February 10, 2010, the time for issuing a decision was extended to April 1, 2010. A Notice of Hearing for Oral Argument was issued on January 25, 2010. Oral argument was held on March 4, 2010, and the Board voted on its decision that day. The time for filing written argument in this matter having expired, written argument having been filed by both parties and such written argument, together with the entire record, including the transcript of said hearing, having been read and considered pursuant to Government Code Section 11517, the Board hereby makes the following decision and order:

The attached proposed decision of the administrative law judge dated September 28, 2009, is hereby adopted by the Board as its decision in this matter except that "Case No. 18-2001-126530" is stricken and replaced with "Case No. 26-2009-196583."

This decision shall become effective at 5 p.m. on April 19, 2010.

IT IS SO ORDERED this 17<sup>th</sup> day of March, 2010.

  
Mary Lynn Moran  
Panel B  
Medical Board of California

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Petition for Reduction  
of Penalty of:**

**MANMOHAN NAYYAR, M.D.,**

**Physician's and Surgeon's Certificate  
Number A42225,**

**Respondent.**

**Case No. 18-2001-126530**

**OAH No. L2009070788**

**PROPOSED DECISION**

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on September 1, 2009, in Los Angeles, California. Manmohan Nayyar, M.D. (Petitioner) appeared and represented himself. Pursuant to the provisions of Government Code section 11522, the Attorney General of the State of California was represented by Heidi Weisbaum, Deputy Attorney General.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on September 1, 2009.

**FACTUAL FINDINGS**

1. Petitioner is the holder of Physician and Surgeon's Certificate Number A42225, issued on October 15, 1985. That certificate is current and is scheduled to expire on September 30, 2011, unless renewed.

2. In a Decision and Order in Case No 18-2001-126530 (Prior Decision) adopting a Stipulated Settlement and Disciplinary Order, the Medical Board of California (Board) revoked Petitioner's certificate, stayed the revocation and placed Petitioner on probation for four years on specified terms and conditions. The Prior Decision became effective on January 1, 2007, except for Condition Number 6, "Monitoring Practice," which became effective October 1, 2006, and Condition Number 7, "Prohibited Practice," which became effective on August 4, 2006 (the date the Board ordered the adoption of the Stipulated Settlement and Disciplinary Order).

The Prior Decision was based on Petitioner's treatment of nine patients and his alleged gross negligence, false records, failure to maintain adequate and accurate records and prescribing without medical indication.

3. The terms and conditions mandated by the Prior Decision included oversight of Petitioner's practice by a Board-approved monitor and completion of a prescribing practices course, a medical record keeping course, an ethics course, and the Physician Assessment and Clinical Education (PACE) Program. Additionally, from October 1, 2006, until January 1, 2007, Petitioner was prohibited from examining or treating any new managed care patients.

4. Petitioner is in full compliance with the probationary terms and conditions of the Prior Decision and has completed all required continuing medical education.

5. Petitioner previously kept no electronic medical records and had problems with illegible writing. He admitted that many times in the past, he did not document the medical record out of laziness. His documentation is now excellent. His records are now electronic and include much more information because the computer generates a template which must be completely filled out. Without completion of the template, which includes a full history and findings, the medical note cannot be closed. Once the template is completed, Petitioner can print out recommendations and a discussion of risks and benefits of recommended treatment. Any drug interactions are noted, thereby reducing medical errors. His prescriptions are now computerized and printed, and he plans to obtain a modem to transmit prescriptions directly to the pharmacy.

6. Petitioner demonstrated a positive attitude about being on probation, viewing it as a learning experience. After completing his Board-ordered prescribing and record-keeping courses, Petitioner realized that the information in those courses was not taught to him in medical school. According to Petitioner, while medical school teaches students how to diagnose and treat patients, legal requirements are not taught. His three children are studying medicine. Since his two sons are in their fourth year of medical school, he told them they should take prescribing and record-keeping courses prior to practicing medicine and "not wait until problems arise." He has also recommended these courses to his colleagues, pointing out that they help define physicians' duties and obligations.

7. Petitioner is a Board-certified Neurologist. He currently has hospital affiliations with Victor Valley Community Hospital in Victorville and with St. Mary Medical Center in Apple Valley. He is President of Choice Medical Group, an Independent Physicians Association in Apple Valley, California. He is also Manager of Desert Physicians Management, LLC, a Management Services Organization (MSO) which manages Choice Medical Group and other independent physicians' practices. He is President of the San Bernardino County Medical Society and has

acted as President of the Association of Indian Neurology in America, a national organization which represents neurologists of Indian origin practicing in the United States. He is also a Fellow of the American Academy of Neurology.

8. Petitioner is Manager of Physician's Hospital Management (PHM), LLC, a MSO which oversees a 115-bed hospital in Apple Valley. The hospital was in financial trouble and was in danger of closure, which would have been detrimental to the community. Petitioner formed the non-profit PHM and helped to stabilize the failing hospital through procurement of capital and replacement of medical equipment.

9. Petitioner recently helped collect approximately one million dollars to build and dedicate a new Krishna Temple in their community, so that children would have a place in the community to worship. He is involved in breast cancer awareness and collects money to donate to Today's Woman Foundation. He also provides free medical advice and financial assistance to a battered women's shelter. He is also involved in numerous other community and philanthropic activities.

10. Petitioner has the support of his colleagues, Dawit Mamo, M.D., and Eric R. Hansen, D.O., and of his Board-approved probation monitor, Noel C. Bernales, M.D., who submitted letters of recommendation on his behalf. Drs. Mamo, Hansen and Bernales described Petitioner as a compassionate, well-respected neurologist. From her observations as Petitioner's practice monitor, Dr. Bernales noted that Petitioner "meets and exceeds the standard of care" and follows the guidelines set by the American Academy of Neurology. According to Dr. Bernales, Petitioner "does in fact practice medical care with dignity, professionalism, following evidence-based medicine. . . [and is] quite morally upright and empathetic to his patient's welfare."

11. Petitioner also has the support of Catherine M. Pelley, Chief Executive Officer of the Victor Valley Community Hospital, one of the hospitals with which Petitioner is affiliated. Ms. Pelley submitted a letter of recommendation, describing Petitioner as a man of integrity, a loving husband and a great father.

12. Anna Sugi, Administrator for Choice Medical Group, the medical group for which Petitioner has been the President for the past 19 years, also submitted a letter of recommendation on Petitioner's behalf. She described Petitioner as well-respected in their community. According to Ms. Sugi:

During the years that I have worked with Dr. Nayyar, I have seen him always being focused on expanding and improving health care delivery system in our community for the benefit of the patients we serve and of the community as a whole. As President of Choice Medical Group he is supportive of all projects geared on improving and expanding preventative care

programs, and educational programs to improve the quality of life of our patients. In the year 2000, he was very supportive of my vision of creating a non-profit foundation, the Today's Woman Foundation, which in the last nine years has provided grants and assistance to many women in our community afflicted by cancer and unable to bear the expenses of treatment of the disease. The Foundation also provides programs related to breast cancer awareness as well as heart disease. Each year it provides free screenings for women and educational material. Dr. Nayyar has also supported the creation and formation of our Health & Wellness Center, which provides services to senior patients and it caters to women's health [and] preventative services.

### LEGAL CONCLUSIONS

1. Petitioner has made the necessary showing that it would be consistent with the public interest to permit early termination of his probation, by reason of Findings 1 through 12.

2. Petitioner bore the burden of proving both his rehabilitation and his fitness to practice medicine. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546-547.) Petitioner's burden required a showing that he is no longer deserving of the adverse character judgment associated with the discipline imposed against his certificate. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) Petitioner has sustained his burden of proof.

3. Business and Professions Code section 2307, subdivision (e), states in pertinent part:

The panel of the division or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. . .

4. California Code of Regulations, title 16, section 1360.2 states:

When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall

evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

(d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e).

(e) Evidence, if any, of rehabilitation submitted by the applicant.

5. Petitioner has completed over two and a half of his four years of probation. Petitioner has complied with all probationary terms and conditions set forth in Prior Decision. He has also acknowledged his wrongful actions, made the necessary changes, and turned his probation into a positive learning experience that he has shared with others. Petitioner has been supervised by a practice monitor, Dr. Bernales, who observed that Petitioner "meets and exceeds the standard of care." Petitioner is highly regarded by his colleagues and members of his community. He is an upstanding member of the community who contributes a great deal to his community, both financially, professionally and through his exemplary leadership. The totality of the evidence established that, in the event his probation is terminated, Petitioner would no longer pose a danger to the public.

6. Petitioner has sustained his burden of proof that he is rehabilitated and entitled to early termination of his probation.

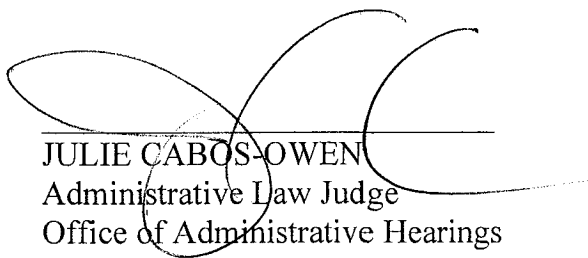
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**ORDER**

**WHEREFORE, THE FOLLOWING ORDER is hereby made:**

The petition of Manmohan Nayyar, M.D., for termination of probation is granted.

Dated: September 28, 2009



JULIE CABOS-OWEN  
Administrative Law Judge  
Office of Administrative Hearings

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Petition for Reduction )  
of Penalty of: )

**MANMOHAN NAYYAR, M.D.** )

**OAH NO: L2009070788**

Physician's & Surgeon's )  
Certificate # A42225 )

MBC Case No: 18-2001-126530

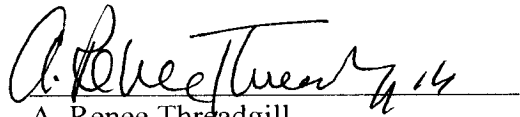
\_\_\_\_\_  
Respondent )

**ORDER DELAYING DECISION**

Pursuant to Business & Professions Code 2335 and Section 11517 of the Government Code, the Medical Board of California (Board), finding that a further delay is required by special circumstances, hereby issues this order delaying the decision for no more than 30 days from March 3, 2010, (when the 100 day period expires) to April <sup>1</sup>, 2010.

The reason for the delay is as follows: This case is on the agenda for the Board's meeting of March 4, 2010. Therefore, the Board needs additional time to discuss and consider written and oral arguments by the parties, re-draft the decision, and to affect service on the parties.

DATED: **February 10, 2010.**



A. Renee Threadgill  
Chief of Enforcement  
Division of Medical Quality

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Petition for Reduction )  
of Penalty of: )

**MANMOHAN NAYYAR, M.D.** )

Physician's & Surgeon's )  
Certificate No.: A42225 )

Case No.: 18-2001-126530

OAH No.: L2009070788

\_\_\_\_\_  
Respondent. )

**ORDER OF NON-ADOPTION  
OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit, including in particular, argument directed to what the respondent has done to improve his practice of medicine, as opposed to his charitable involvements. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

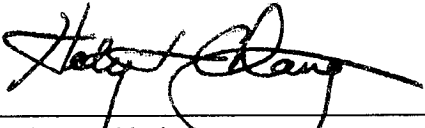
To order a copy of the transcript, please contact Huntington Reporters, 1450 W. Colorado Blvd., Suite 100, Pasadena, CA, 91105. Their telephone number is (626) 792-6777. To order a copy of the exhibits at 10 cents per page, please submit a written request to this Board.

In addition to written argument, oral argument will be scheduled if any party files with the Board within 20 days from the date of this notice a written request for oral argument. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA  
2005 Evergreen Street, Suite 1200  
Sacramento, CA 95815-3831  
(916) 263-2349  
Attention: John Yelchak

Dated: November 4, 2009.

  
\_\_\_\_\_  
Hedy Chang, Chairperson  
Panel B

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3. Business and Professions Code section 2307, subdivision (e), states in pertinent part:

The panel of the division or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. . .

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- (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.
- (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).
- (d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e).
- (e) Evidence, if any, of rehabilitation submitted by the applicant.

5. Petitioner has completed over two and a half of his four years of probation. Petitioner has complied with all probationary terms and conditions set forth in Prior Decision. He has also acknowledged his wrongful actions, made the necessary changes, and turned his probation into a positive learning experience that he has shared with others. Petitioner has been supervised by a practice monitor, Dr. Bernales, who observed that Petitioner "meets and exceeds the standard of care." Petitioner is highly regarded by his colleagues and members of his community. He is an upstanding member of the community who contributes a great deal to his community, both financially, professionally and through his exemplary leadership. The totality of the evidence established that, in the event his probation is terminated, Petitioner would no longer pose a danger to the public.

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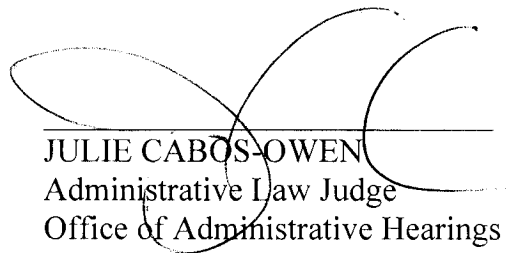
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**ORDER**

**WHEREFORE, THE FOLLOWING ORDER is hereby made:**

The petition of Manmohan Nayyar, M.D., for termination of probation is granted.

Dated: September 28, 2009



JULIE CABOS-OWEN  
Administrative Law Judge  
Office of Administrative Hearings